

## DISSENTING STATEMENT OF COMMISSIONER MICHAEL J. COPPS

*Re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*

I strongly dissented last year when the Commission issued an order short-circuiting the franchise negotiation process between new entrants into the video market and local governments. Our decision that day found no justification in the record compiled in the proceeding, and it struck me as violative of the basic principles of federalism and the statute Congress has given us. In short, I found no rationale for the FCC to intrude into these negotiations.

I dissent to today's item because I believe the legal and factual justifications for this new decision—concerning the negotiations between existing franchise holders and local governments—are even weaker. And they are even more contrary to good government. If our previous decision was a body blow to the principle of federalism, today's decision is the *coup de grace*.

As I explained in my prior statement, the record before us at that time did not contain sufficient granularity to convince me that the process for competitive entry into the video market was fatally flawed. Nor could I find sufficient justification in the plain language of the statute for the FCC to insert itself into the franchise negotiation process. I instead read Congress's words as indicating that negotiations should be conducted between companies and Local Franchise Authorities, with legal disputes to be adjudicated by federal district courts.

I find today's *Order* to be even *more* intrusive into traditional prerogatives of local franchising authorities than our prior *Order*, while simultaneously *less* persuasive about the policy or legal grounds for taking such a step. To begin with, I do not see any evidence in the record that existing franchise operators are facing meaningful competitive disadvantages or barriers. And our decision today certainly does not have the virtue of introducing new competition to the market. Rather, it addresses—and changes—an existing negotiation process that is respectful of the principles of federalism and that appears to be working well today. If it ain't broke, why are we fixing it?

My concern about today's decision is not just philosophical. As the record indicates, one possible consequence of this new set of regulations may be to deprive American consumers of access to PEG channels that serve important community needs. Another effect may be to deprive local governments of access to I-Net facilities that support public safety and other important government operations. Finally, this decision opens the Commission to enormous legal risk. Why incur such results when Congress provided a workable process for incumbent video providers and LFAs to negotiate with each other for franchises, with recourse to federal district courts if disagreements arose?

In conclusion, I certainly understand my colleagues' interest in establishing regulatory parity between different video services providers. Parity is an important value and I generally support it. But this is parity moving in the wrong direction. It is parity undercutting good policy; parity denying generations of productive state and local relationships; and parity that will harm consumers, localities and public safety, among others. It represents exactly the sort of unexpected—or at least unpublicized—consequences that flow from our original mistaken franchising decision. Though the genie is out of the bottle for now, I hope that at some point my

colleagues and I will consider removing the Commission from the field of local franchise regulation—where we are not welcome and have no reason to be.